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Q08

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/359,426 07/22/99 CRIPPS

A 064727.0105

HM22/0519

BAKER & BOTTS LLP  
THE WARNER  
1299 PENNSYLVANIA AVENUE NW  
WASHINGTON DC 20004-2400

EXAMINER

DEVIS

ART UNIT	PAPER NUMBER
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1641

5

DATE MAILED:

05/19/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. 09/359,426	Applicant(s) <b>Cripp et al.</b>
	Examiner <b>S. Devi, Ph.D.</b>	Group Art Unit <b>1641</b>

Responsive to communication(s) filed on 11/03/99.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-35 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims 1-35 are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

Notice to Comply with Sequence Rules.

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/359,426	07/22/99	Cripp et al.	064727.0105

EXAMINER	
S. Devi, Ph.D.	
ART UNIT	PAPER NUMBER
1641	5

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application

Commissioner of Patents

- 1) This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 C.F.R 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 C.F.R 1.821 through 1.825 for the reason(s) set forth on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures.
  
- 2) APPLICANT IS GIVEN A ONE MONTH EXTENDABLE PERIOD OF TIME FROM THE DATE OF THIS LETTER WITHIN WHICH TO COMPLY WITH THE SEQUENCE RULES, 37 C.F.R 1.821 - 1.825. Failure to comply with these requirements will result in ABANDONMENT of the application under 37 C.F.R 1.821(g). Extensions of time may be obtained under the provisions of 37 C.F.R 1.136. In no case may an Applicant extend the period of reply beyond the SIX MONTH statutory period. Applicant is requested to return a copy of the attached Notice to Comply with the response.

**Election/Restriction**

- 3) Claims 1-35 are under prosecution.
- 4) **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your election responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Donald E. Adams, Ph.D., Supervisory Patent Examiner at Paula Hutzell, Ph.D., Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.
- 5) Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, 18-20 and 21-27, drawn to an outer membrane protein from *Ps. aeruginosa*, an antigenic fragment thereof, a kit and a composition comprising the same, classified in class 530, subclasses 350 and 825.
  - II. Claims 10-17, drawn to a method of detecting *Ps. aeruginosa* using the outer membrane protein from *Ps. aeruginosa*, classified in class 435, subclass 7.1.
  - III. Claims 28-35, drawn to a method for the treatment or prophylaxis of *Ps. aeruginosa* infection using the protein or the antigenic fragment thereof, classified in class 424, subclass 260.1.
- 6) Inventions I, II and III are distinct from one another. Invention I is directed to a protein product, or an antigenic fragment thereof, whereas inventions II and III are directed to two distinct methods of using the product.

Inventions I and II are related as product and process of using the product. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P 806.05(h)). In the instant case, the protein or antigenic fragment of invention I can be used in a materially different process, for example, as an immunogen to produce a protein-specific

antiserum reagent.

Inventions I and III are related as product and process of using the product. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P 806.05(h)). In the instant case, the protein or antigenic fragment of invention I can be used in a materially different process, for example, as a source of coating antigen in an *in vitro* diagnostic assay to measure protein-specific antibodies.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification/subclassification and divergent subject matter, and since a search performed for one would not be co-extensive for the other, restriction for examination purposes as indicated is proper.

7) Applicants are advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R 1.143).

8) Applicants are reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filled petition under C.F.R 1.48(b) and by the fee required under 37 C.F.R 1.17(h).

9) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (703) 308-9347. The Examiner can normally be reached on Monday to Friday from 7.45 a.m. to 4.15 p.m. A telephone message may be left on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James Housel, can be reached on (703) 308-4027. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

S. Devi  
May 2000

**NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES**

The nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 C.F.R. 1.821 - 1.825 for the following reason(s):

- 1. This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to these regulations, published at 1114 OG 29, May 15, 1990 and at 55 FR 18230, May 1, 1990.
- 2. This application does not contain, as a separate part of the disclosure on paper copy, a "Sequence Listing" as required by 37 C.F.R. 1.821(c).
- 3. A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. 1.821(e).
- 4. A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked-up "Raw Sequence Listing."
- 5. The computer readable form that has been filed with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. A Substitute computer readable form must be submitted as required by 37 C.F.R. 1.825(d).
- 6. The paper copy of the "Sequence Listing" is not the same as the computer readable form of the "Sequence Listing" as required by 37 C.F.R. 1.821(e).
- 7. Other: \_\_\_\_\_

**Applicant Must Provide:**

- An initial or substitute computer readable form (CRF) copy of the "Sequence Listing".
- An initial or substitute paper copy of the "Sequence Listing", as well as an amendment directing its entry into the specification.
- A statement that the content of the paper and computer readable copies are the same and, where applicable, include no new matter, as required by 37 C.F.R. 1.821(e) or 1.821(f) or 1.821(g) or 1.825(b) or 1.825(d).

For questions regarding compliance to these requirements, please contact:

For Rules Interpretation, call (703) 308-4216

For CRF Submission Help, call (703) 308-4212

PatentIn Software Program Support (SIRA)

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To Purchase PatentIn Software.....703-306-2600

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# RESTRICTION ELECTION FACSIMILE TRANSMISSION

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FROM/ATTORNEY:

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PHONE NUMBER:

TO EXAMINER: Dr. S. Devi

ART UNIT: 1641

SERIAL NUMBER:

FAX/TELECOPIER NUMBER: (703) 305-3704

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